IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2534 of 2007(B)

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PETITIONER:

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BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS:

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BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON / / , THE COURT ON 22/01/2007 DELIVERED THE FOLLOWING:

**PIUS C.KURIAKOSE, J.**

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**W.P.(C)NO.2534 of 2007**

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**Dated this 22nd day of January, 2007**

**JUDGMENT**

The grievance of the petitioner is that even as Ext.P2 petition in Ext.P1 C.M appeal preferred by him against the order of the Election Tribunal setting aside election is pending WW before the District Court Kasaragod, the Election Commission announced the conduct of fresh election to the vacancies which has arisen on account of the order of the Election Tribunal.

2. Sri.Murali Purushothaman, the learned Standing Counsel for the Election Commission takes notice on behalf of the 4th respondent Election Commission. He would submit on the basis of the instructions received by him that it is true that the election has been announced. Referring to Section 149 (3) of the Panchayat Raj Act, he submitted that the Election Commission is obliged to fill up the vacancies in the office of member of the Panchayat within six months of occurrence of vacancy. The Commission has time till 28.2.2007 for filling up the vacancy which has arisen on account of the order of the Tribunal. In view of the obligatory provisions contained in the Panchayat Raj Act

the Election Commission cannot be faulted for having announced the election. Concededly the petitioner has not been successful in obtaining any stay from the appellate court. The petitioner has a grievance that though urgency of the matter was highlighted before the learned District Judge, the learned Judge has not been able to take up Ext.P2 and pass orders on the same. The learned counsel for the petitioner fairly conceded that the pressure of work and the pendency of still earlier cases is the reason for the inability of the learned District Judge to take up Ext.P1 appeal.

3. Having regard to the grounds raised and the submission addressed before me by Sri.T.K.Vipindas the learned counsel for the petitioner and Sri.Murali Purushothaman, the learned Standing Counsel for the Election Commission, I am of the view that it will be difficult for this court to grant the reliefs sought for in the writ petition. The writ petition will however stand disposed of with the following directions:

The petitioner will file an application for advancement of consideration of Ext.P2 I.A ( Stay Petition in Ext.P1 CMA) with notice to the parties. The learned District Judge will favorably consider that application and take up Ext.P2 I.A after advancing

the same to the nearest possible date and pass appropriate orders on the I.A. at his earliest and at any rate within five days of his hearing arguments in the I.A. The promulgation of election notification and all subsequent action thereon by the Election Commission will be subject to the out come of Ext.P2 stay petition.

**PIUS C.KURIAKOSE**
**Judge**

dpk